



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 (“Staff Union”) had filed a motion requesting leave to file a friend-of-the-court (“*amicus*”) brief with respect to the present 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 Staff Union’s request to file a friend-of-the-court brief.

5. By Order No. 074 (NY/2023) dated 22 August 2023, the Tribunal ordered, *inter alia*, the Staff Union to file further submissions elaborating its precise involvement with the specific issues in dispute in this case.

6. On 8 September 2023, the Staff Union filed a further submission.

7. On 15 September 2023, the Respondent filed his response to the Staff Union’s additional filing maintaining its objection to the Motion.

Considerations

8. The Motion filed by the Staff Union stated that “the Applicant is a registered member of the Staff Union and has sought its advice and support in pursuing recourse”.

The Staff Union submitted 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 [the Office of Internal Oversight Services] 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.

9. The Respondent objected to the Motion submitting that the friend-of-the-court brief would not assist the Tribunal in its deliberations, as it failed to meet the minimum criteria set out in settled jurisprudence.

10. By Order No. 074 (NY/2023) dated 22 August 2023, the Tribunal informed the parties that the Motion failed 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 Tribunal noted that the Motion instead set out general ambiguous references to the Staff Union's potential involvement with issues in this case. The Tribunal ordered 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.

11. In its additional submission dated 8 September 2023, the Staff Union provided the following three reasons for why a filing of a brief by the Staff Union would assist the Dispute Tribunal in its deliberations in the present case. First, the Staff Union submitted that it has “an informed perspective to share regarding systemic shortcomings” of the Organization's handling of the dysfunctional work environment within OSAA. Second, that the Staff Union had “first-hand knowledge of the matter as it has interacted with the Management and OSAA staff as well as with the Ombudsman's office and Ethics Office”. Third, that the Staff Union's proposed friend-

of-the-court brief “addresses the issue of systemic dysfunction and observes that instead of applying the Protection against Retaliation (“PaR”) measures without delay, the Administration delayed the PaR measures leaving the Applicant further exposed to the prevailing dysfunction at the Office”.

12. 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 judge hearing the case considers that “the filing of the brief would assist the Dispute Tribunal in its deliberations”.

13. 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 (paras. 26-27):

... 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.

14. 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 (paras. 19-20):

... 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.

15. The Dispute Tribunal held in *Andrysek*, Order No. 006 (GVA/2020) dated 22 January 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]” (see para. 13).

16. Under guidance of the jurisprudence and upon review of the parties’ submissions, the Tribunal considers that the Staff Union’s request for a friend-of-the-court’s intervention in this case fails to meet the minimum criteria set out in settled jurisprudence. In particular, the Staff Union has failed to demonstrate that its intervention can assist the Tribunal with either high technical or complex legal issues in this case. Instead of providing further submissions elaborating its precise involvement with the specific issues in dispute in this case, as instructed by the Tribunal in Order No. 074 (NY/2023), the Staff Union simply reiterates that it has an “informed perspective to share regarding systematic shortcomings” of the Organization’s handling of the dysfunctional work environment within OSAA and delays in applying the PaR measures.

17. The Tribunal notes that the issue in this case is the Applicant’s own conduct and the Administration’s finding of insubordination by the Applicant. The issue of whether the internal OSAA restructuring was lawful or properly managed is not the subject-matter of the dispute. Similarly, the case does not relate to whether the Administration properly and timely adopted PaR measures relating to the Applicant. These matters are not before the Tribunal and the Staff Union’s possible arguments on these issues are, therefore, not helpful to the Tribunal’s deliberations. The Tribunal also notes that the purpose of a friend-of-the-court brief is generally to provide the Tribunal with neutral relevant information that is not generally within the expertise of counsel

or the Judges. The purpose of a friend-of-the-court brief is not to make observations in favor of a party, which in this instance seems to be the intention of the Staff Union.

18. The Tribunal takes note that in its further submission the Staff Union's makes references to confidential documents relating to the underlying case, to which the Staff Union should not be privy, such as the Respondent's reply. The Tribunal reminds the parties of this case of their confidentiality undertaking in these proceedings.

19. For the reasons set out above, the Staff Union's request for a friend-of-the-court's intervention is denied.

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

IT IS ORDERED THAT:

21. The Staff Union's Motion requesting for a friend-of-the-court's intervention is denied.

(Signed)

Judge Joelle Adda

Dated this 22nd day of September 2023

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

(Signed)

Isaac Endeley, Registrar, New York