



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

NAVAS CASTILLO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Isavella Maria Vasilogeorgi, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 060 (NY/2023) dated 25 July 2023, the Tribunal ordered (a) the parties to file a jointly-signed statement setting out the agreed and disputed facts and (b) the parties to file individual submissions on the need for additional written and/or oral evidence.

2. On 26 September 2023, as per Order No. 060 (NY/2023), the parties filed the jointly-signed statement. Also, the Respondent filed a submission wherein he argued that no further evidence was necessary as the case was fully briefed, adding that if a hearing, nevertheless, was to be held, he requested BB and CC to be heard as witnesses. The Applicant filed a number of additional documents but made no submissions regarding the need for a hearing.

Consideration

The need for a hearing

3. With reference to Order No. 060 (NY/2023), the Tribunal recalls that if the Applicant wishes to hear any witnesses, he is to specifically name each proposed witness and clearly indicate what disputed fact(s) the witness's testimony is intended to corroborate. 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 the Appeals Tribunal in *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a degree of specificity to his request.

4. As the present case is a disciplinary matter, the Tribunal notes that witness testimonies would only be relevant in its judicial review of whether the Administration has lawfully established the facts of the contested decision. The other prongs of this judicial review (namely, whether the demonstrated facts

amounted to misconduct, whether the sanction was proportional, and whether due process was accorded) are legal rather than factual determinations.

5. The factual background of the contested decision is set out in the sanction letter dated 19 July 2022 where it is alleged that the Applicant:

a. “Convinced [BB] that [AA] was the best option for the position of IC [Individual Contractor] with FTS [Field Technology Service], despite [BB’s] knowledge that [the Applicant] and [AA] were in or had been in a relationship, on the basis of [the Applicant’s] assurances that [he] and [AA] could be objective and professional and because, in any case, since [BB] was leaving the mission, he had informally delegated responsibility for the recruiting process to [the Applicant]”;

b. “Recommended hiring [AA] as an IC with FTS, even though [the Applicant] knew she did not fulfil the requirements for the position”;

c. “Recommended hiring [AA] as a Trygin employee to [CC], while failing to disclose [the Applicant’s] relationship with [AA] or her lack of English, and despite the fact that she would remain part of [his] reporting line”;

d. “Acted as [AA’s] direct supervisor, while [AA] was working as IC-FTS/UNVMC [United Nations Verification Mission in Colombia] and as Trygin employee, despite the fact that [he was] in a relationship [with her]”.

6. As a mitigating factor, the USG/DMSPC referred to the Applicant’s “22 years of service in different mission settings, including hardship duty stations”. As aggravating factors, it is stated that the USG/DMSPC “considered” the following:

a. The Applicant “remained unremorseful and refused to acknowledge any fault on [his] part regarding the creation and maintenance of a conflict of interest affecting the interests of the Organization”;

b. His “misconduct compromised the objectivity and integrity of the selection process and damaged the reputation of the Organization in matters relating to selection processes amongst FTS staff members”; and

c. The Applicant “had multiple opportunities to disclose [his] relationship with [AA] to [his] supervisor, [CC], during the prolonged material period of time, and failed to act on them.”

7. The question for the Applicant to decide is therefore whether he wishes to call any witnesses to contradict any of these facts.

8. The Tribunal further reiterates that arts. 16.1 and 16.2 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”. It therefore follows that it is for the Tribunal to determine whether a hearing is necessary and that in a disciplinary case like the present one, this shall normally be done.

9. If the Applicant does not wish to hear any witnesses, the Tribunal will request him to indicate whether he finds that an oral hearing is necessary and indicate the purported objective thereof (see, also *Nadasan* 2019-UNAT-918, para. 39, as affirmed in *Ganbold* 2019-UNAT-976, para. 28). This could, for instance, be for the parties to present their legal contentions directly to the Tribunal, although it is noted that the parties would, in any case, also need to file written closing statements summarizing all their final submissions.

10. In the event the Applicant does not wish to call any witnesses or does not request a hearing to be held for any other purpose, the Tribunal sees no reason to do so (in line herewith, see, for instance, the Appeals Tribunal in *AAK* 2023-UNAT-1348). Instead, the Tribunal will proceed with ordering the parties to file their written closing statements whereafter the final judgment will be rendered.

Translation of the investigation report

11. The Tribunal notes that the English translation of the investigation report dated 20 March 2020, which is appended as annex 2 to the reply, does not appear to be an official translation but has rather been undertaken by a “CDT Officer” (assumedly, meaning a conduct and discipline officer) working in the Mission, where the Applicant served.

12. For a fair and expeditious disposal of the present case and to do justice to the parties, the Tribunal is willing to accept the translation on file unless either of the parties states its objection thereto. Should either of them do so, a new translation will be ordered, but the Tribunal notes that due to the length of the document, this may delay the adjudication of the case.

13. In light of the above,

IT IS ORDERED THAT:

14. By **4:00 p.m. on Monday, 16 October 2023**, each of the parties is to confirm whether the Tribunal may proceed with reviewing the present case on the basis of the English translation of the investigation report, which is appended as Annex 2 to the reply.

By **4:00 p.m. on Monday, 16 October 2023**, the Applicant is to submit whether he requests a hearing to be held, and if so, indicate the purported purpose of such hearing. If the Applicant wishes to hear any witnesses, he is to state (a) the identity of the witness(es) and (b) what disputed fact(s) each of these witnesses is requested to give testimony about. If the Applicant does not wish a hearing to be held, the Tribunal will proceed to close the proceedings as soon as the issue of translation of the investigation report has been resolved.

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 10th day of October 2023

Entered in the Register on this 10th day of October 2023

(Signed)

Isaac Endeley, Registrar, New York