



Before: Duty Judge
Registry: New York
Registrar: Isaac Endeley

AMMAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

Ron Mponda

Counsel for Respondent:

Elizabeth Brown, UNHCR
Louis Lapicerella, UNHCR

Introduction

1. By an application filed on 21 August 2023, the Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to separate him from service with compensation in lieu of notice, and with half termination indemnity pursuant to staff rule 10.2(a)(vii).

2. On 6 September 2023, the Respondent filed a motion for leave to exceed the 10-page limit for a reply, arguing that in the application, “the Applicant did not address all relevant facts of the case and referred to a number of key issues, some of a technical nature, very broadly”. Attached to the motion was an “advance copy” of the Respondent’s reply, which was 24 pages long. Via email on the same day, the Tribunal granted the Respondent’s motion in part and authorized him “to file a reply not exceeding 20 pages in length, which is twice the normal page limit”.

3. On 13 September 2023, the Respondent filed his reply, stating that the application is without merit as the facts of the case “are established to the required standard of proof; they constitute misconduct; the disciplinary measure is proportionate to the gravity of the Applicant’s misconduct; and the Applicant’s due process rights were respected”.

Considerations

4. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, the Tribunal may at any time issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties.

The Tribunal’s scope of review of disciplinary cases

5. Under the settled jurisprudence of the Appeals Tribunal, judicial review of a disciplinary case requires the Dispute Tribunal to examine: (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate

to the offence; and (d) whether the staff member's due process rights were respected. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. (See, for instance, *Karkara* 2021-UNAT-1172, para. 51; *Suleiman* 2020-UNAT-1006, para. 10; *Nadasan* 2019-UNAT-918, para. 38; and *Siddiqi* 2019-UNAT-913, para. 28).

6. The Appeals Tribunal has further explained that clear and convincing proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable” (see *Molari* 2011-UNAT-164, para. 30). In this regard, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred” (see *Turkey* 2019-UNAT-955, para. 32).

Agreed and disputed facts

7. In the present case, on reviewing the parties' submissions on the facts, it is not clear to the Tribunal on what facts they actually agree and disagree. In this regard, the Appeals Tribunal has held that the Dispute Tribunal is not to make its own factual findings if the parties have agreed on certain facts (see *Ogorodnikov* 2015-UNAT-549, para. 28). 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 need for evidence arises only if a fact is disputed and relevant (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

8. The Tribunal will therefore order the parties to produce consolidated lists of agreed and disputed facts to facilitate its review of the factual issues at stake.

9. In light of the above,

IT IS ORDERED THAT:

10. By **3:00 p.m. on Friday, 5 January 2024**, the parties are to file a jointly-signed statement providing, under separate headings, the following information:

a. A consolidated list of the agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;

b. A consolidated list of the disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s).

11. By **3:00 p.m. on Friday, 5 January 2024**, each party is to submit whether it requests to adduce any additional evidence, and if so, state:

a. What additional documentation it requests to be disclosed, also indicating what fact(s) this is intended to substantiate; and/or

b. The identity of the witness(es) the party wishes to call, if any, and what disputed fact(s) each of these witnesses is to give testimony about, also setting out the proposed witness's testimony in writing. This written 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.

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12. Upon receipt of the above-referenced submissions and when the case has been assigned to a Judge of the Dispute Tribunal, relevant instructions for further case management will be issued.

(Signed)

Judge Joelle Adda

Dated this 16th day of November 2023

Entered in the Register on this 16th day of November 2023

(Signed)

Isaac Endeley, Registrar, New York