



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/038
Order No.: 007 (NY/2024)
Date: 23 January 2024
Original: English

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

ROTHEROE

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, UN Secretariat
Halil Göksan, DAS/ALD/OHR/UN Secretariat

Introduction

1. On 27 October 2023, the Applicant, a former Deputy Director of Investment Management with the Office of Investment Management (“OIM”), United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application in which she challenges the decision to impose upon her the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.
2. On 24 November 2023, the Respondent filed a reply in which he contends that the application is without merit.

Consideration

3. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, the Tribunal may at any time issue an 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 considers it necessary for the parties to file further submissions.

Agreed and disputed facts

4. When studying the parties’ submissions on 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, there is, in essence, only a need for evidence 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).

5. The Tribunal will therefore order the parties to produce consolidated lists of agreed and disputed facts to be able to understand the factual issues at stake.

Evidence

6. To start with, the Tribunal notes that neither party has requested production of any additional evidence, either written or oral. If either of the parties wishes such evidence to be produced, they are to specifically refer to the relevant documentation/witness and clearly indicate what disputed fact the relevant evidence 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, for instance, *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a certain degree of specificity to her/his request.

7. Regarding written documentation, when perusing the case file, the Tribunal finds that it needs to understand the case better before deciding whether all relevant materials have been submitted. The parties are also instructed to indicate what further documentation, if any, they wish to produce and, if possible, submit the relevant material(s).

8. As for oral evidence, the Tribunal notes 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 judge to whom a case is assigned to determine whether a hearing is necessary and that in a disciplinary case like the present one, this shall normally be done.

9. If no oral evidence needs to be produced, the Tribunal will accordingly request each of the parties to indicate whether they find 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 Judge, although it is noted that the parties would, in any case, also need to file written closing statements summarizing all their submissions.

10. In light of the above,

IT IS ORDERED THAT:

11. By **4:00 p.m. on Friday, 22 March 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).

12. By **4:00 p.m. on Friday, 22 March 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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13. 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 23rd day of January 2024

Entered in the Register on this 23rd day of January 2024

(Signed)

Isaac Endeley, Registrar, New York